

9-116.000 EQUITABLE SHARING

9-116.100	General Adoption Policy and Procedure
9-116.110	Federal Adoption Form
9-116.120	Federal Investigative Agency Review of Adoption Requests
9-116.150	Judicial Review Favored
9-116.160	30-Day Rule for Presentation for Federal Adoption
9-116.170	United States Attorney Recommendation For Adoption of Seizure
9-116.180	Notice Requirements in Adopted Seizures
9-116.190	Retention of Custody by State or Local Agency
9-116.200	Referral of DAG 71/DAG 72 Forms to United States Attorneys' Offices
9-116.210	Notifying the Department's Criminal Division of United States Attorneys' Equitable Sharing Decisions
9-116.310	Equitable Sharing Check Disbursement in Judicial Forfeitures
9-116.311	Equitable Sharing Check Disbursement in Administrative Forfeitures
9-116.312	Role of Law Enforcement Coordinating Committees
9-116.330	Transmittal Letters for Equitable Sharing Checks
9-116.400	International Sharing of Forfeited Assets
9-116.500	Weed and Seed Initiative -- Transfers of Real Property
9-116.520	Transfer of Forfeited Real Property Pursuant to Weed and Seed Initiative
9-116.530	Liens, Mortgages, and Third Party Ownership Interests in Weed and Seed Transferred Real Property
9-116.540	Asset Seizure, Management and Case-Related Expenses
9-116.550	Law Enforcement Concurrence
9-116.600	Transfer of Property Forfeited under the Magnuson Fisheries Conservation and Management Act from the Department of Justice to the National Oceanic and Atmospheric Administration

9-116.100 General Adoption Policy and Procedure

The policies and procedures set forth below are intended to ensure consistent review and handling of state and local seizures presented for Federal adoption. *See* the Criminal Resource Manual at 2262. These policies and procedures do not apply to adoption of seizures by the United States Customs Service.

9-116.110 Federal Adoption Form

All state and local requests for adoption must be reported on a form entitled "Request for Adoption of State or Local Seizure." A copy of this form is in the Criminal Resource Manual at 2288. The form must be completed by the requesting state or local agency, but Federal personnel may, in their discretion, complete the form for the requesting state or local agency.

Information concerning any state forfeiture proceedings instituted against the property must be detailed in the request for adoption. The state or local agency must also complete the Federal agency's standard federal asset seizure form as part of its adoption request. All information provided must be complete and accurate. An estimate of fair market value must be provided for each item of seized property presented for adoption and any liens and lienholders must be identified. Copies of any investigative reports and of any affidavits in support of warrants pertinent to the seizure shall be attached for review. State or local agencies may redact from investigative reports information which may disclose the identity of a confidential informant.

9-116.120 Federal Investigative Agency Review of Adoption Requests

The adopting federal agency must review and accept or decline adoption requests promptly. Property management issues must be addressed in consultation with the U.S. Marshals Service prior to an adoption. The request for adoption must be accepted prior to the transfer of the property to federal custody unless exceptional circumstances exist.

Seizures presented for adoption must be reviewed by an attorney outside the chain-of-command of operational officials (e.g., the seizing agency's Office of Chief Counsel or other legal unit) unless:

- the seizure was based on a judicial seizure warrant; or
- an arrest was made in connection with the seizure; or
- drugs or other contraband were seized from the person from whom the property was seized.

Such attorney review shall verify that:

- the property is subject to federal forfeiture;
- there is probable cause to support the seizure;
- the property is not within the custody of a state court; and
- there is no legal impediment to a successful forfeiture action.

For more information on this topic, see the Criminal Resource Manual at 2263 (Federal Investigative Agency Review of Adoption Requests), 2264 (Minimum Monetary Thresholds for Adoption), and 2265 (Forfeitures Generally Follow The Prosecution).

9-116.150 Judicial Review Favored

Judicial review allows a neutral and detached magistrate to assess the basis for seizure prior to adoption and protects federal enforcement personnel against potential civil suits. Pre-seizure judicial review is not required for adoptive, joint, or federal seizures, but federal personnel are encouraged to secure judicial review whenever practicable prior to Federal seizures or the adoption of a state or local seizure. A judicial determination of probable cause is required prior to a federal adoption of seized real property.

9-116.160 30-Day Rule for Presentation for Federal Adoption

State and local agencies have 30 calendar days from the date of seizure to request a Federal adoption. Waivers of the 30-day rule may be approved by the adopting Federal agency where the state or local agency requesting adoption can demonstrate the existence of circumstances justifying the delay.

9-116.170 United States Attorney Recommendation For Adoption of Seizure

A United States Attorney may recommend in writing that a Federal seizing agency adopt a particular state or local seizure. If the Federal agency declines to adopt the seizure despite the recommendation of the United States Attorney, the agency must promptly document its reasons for declination in a memorandum and forward copies of the memorandum to the United States Attorney and the Asset Forfeiture and Money Laundering Section

(AFMLS). AFMLS will resolve any disagreements and may authorize direct adoption of state or local seizures by United States Attorneys for judicial forfeiture in appropriate circumstances.

9-116.180 Notice Requirements in Adopted Seizures

Prior to approval of an adoption, the state or local agency must not state or imply that a federal agency is the seizing agency or has any law enforcement interest in the property. Once adoption is approved, then notice to all interested parties will be executed by the adopting federal investigative agency pursuant to federal law and policy.

As applied in the case of adopted seizures, the requirements of written notice "[a]t the time of seizure," as set out in 21 U.S.C. § 888(b) and in the editorial note to 21 U.S.C. § 881, are construed to mean *at the time of the federal seizure*, i.e., the decision to adopt the seizure for federal forfeiture. This construction reflects the intent of Congress and no other interpretation is feasible because seizing state and local law enforcement agencies cannot know that the property they seize will be accepted for federal forfeiture until the appropriate federal officials review the seizure and agree to adopt it.

Once a decision has been made to adopt the seizure of an item of property covered by the notice requirements set out at 21 U.S.C. § 888(b) or the note to 21 U.S.C. § 881, the adopting agency must take steps to ensure that the statutory notices are served in the most expeditious manner practicable. Each component of the Department should adjust its internal policies and procedures as necessary to give force to this construction.

9-116.190 Retention of Custody by State or Local Agency

To minimize storage and management costs to the Department of Justice, state and local agencies which present motor vehicles for federal adoption should generally be asked to serve as substitute custodians of the property pending forfeiture. Any use of such vehicles, including official use, by state and local law enforcement officials or others is prohibited by Department of Justice policy until such time as the forfeiture is completed and the equitable transfer is made. Adopted cash and real property must, however, be turned over to the custody of the U.S. Marshals Service. In addition, the Marshals Service must be consulted prior to the adoption of a seizure of real property.

9-116.200 Referral of DAG 71/DAG 72 Forms to United States Attorneys' Offices

Seizing agency field offices will provide a copy of the Application of Transfer of Federally Forfeited Property (DAG-71) and the "preliminary" Decision for Transfer of Federally Forfeited Property (DAG-72) to the pertinent United States Attorney's Office for *all* (whatever the value) administrative and judicial forfeiture actions. The originals of these forms will be concurrently forwarded to the agency's headquarters decision-maker. A United States Attorney's Office may choose not to receive the DAG-71 and/or the preliminary DAG-72 for property appraised at \$100,000 or less. Written notice of this decision should be forwarded to the seizing agency for its records.

9-116.210 Notifying the Department's Criminal Division of United States Attorneys' Equitable Sharing Decisions

Even though United States Attorneys have final decision authority with respect to equitable sharing in judicial forfeiture cases involving less than \$1 million, the "Application for Transfer of Federally Forfeited Property" (DAG 71) and "Decision Form for Transfer of Federally Forfeited Property" (DAG-72), along with final orders of forfeiture, must be forwarded to the Criminal Division for processing and record-keeping purposes. Moreover, all DAG-71s should be filled out completely and all DAG-72s should be signed by the United States

Attorney or an official authorized by the United States Attorney to sign on his or her behalf. Such authorizations of persons to sign on behalf of the United States Attorney should be reduced to writing and a copy supplied to the Criminal Division. *See* the Criminal Resource Manual at 2266.

9-116.310 Equitable Sharing Check Disbursement in Judicial Forfeitures

In judicial forfeiture cases in which the United States Attorney or a Departmental official is the decision maker for equitable transfer, the U.S. Marshal will mail the check to the United States Attorney's office, attention "Law Enforcement Coordinating Committee (LECC) Coordinator." If the United States Attorney makes an equitable sharing decision on a request from a state or local law enforcement agency from a different judicial district, the coordinator should contact the United States Attorney's office in the second district to determine whether or not that United States Attorney wishes to present the check. *See* the Criminal Resource Manual at 2267.

9-116.311 Equitable Sharing Check Disbursement in Administrative Forfeitures

In administrative forfeiture cases in which the federal investigative agency makes the equitable sharing decision, the U.S. Marshal will mail the check to that agency unless otherwise directed by the local agency head.

9-116.312 Role of Law Enforcement Coordinating Committees

Pursuant to the *Attorney General's Guidelines on Seized and Forfeited Property*, July 1990, (USAM 9-118.000) the Law Enforcement Coordinating Committees "shall promote and facilitate the Department of Justice forfeiture program with federal, state and local law enforcement agencies." By memorandum dated June 15, 1990, to all United States Attorneys from the Associate Deputy Attorney General, LECC Coordinators were required to "serve as a clearinghouse for state and local inquiries about the status of pending sharing cases."

To perform these functions, the U.S. Marshal shall provide advance notice to the LECC coordinator of *all* equitable sharing payments and transfers to state and local law enforcement agencies in the judicial district. United States Attorneys' Offices and seizing agencies should work together to ensure proper coordination of all equitable sharing activities.

9-116.330 Transmittal Letters for Equitable Sharing Checks

All federal components shall enclose a transmittal letter which reiterates the policies governing the use of equitable shares as set forth in *The Attorney General's Guidelines on Seized and Forfeited Property* (July 1990) (USAM 9-118.000).

It is important to consistently give the same message to the recipient agencies. The following points should be made:

- The sharing check represents the agency's equitable share of the net proceeds.
- The monies must be used for the law enforcement purposes stated in the Application for Transfer of Federally Forfeited Property (DAG 71).
- These funds must increase and not supplant the agency's appropriated operating budget.
- Any interest earned on these funds must also be used for law enforcement purposes.

A sample letter is in the Criminal Resource Manual at 2289.

9-116.400 International Sharing of Forfeited Assets

It is the policy of the Department to share, in accordance with United States law and established procedure, the proceeds of successful forfeiture actions with the country or countries which facilitate the forfeiture of assets under United States law. Commitments to share internationally in specific cases can only be made with the approval of the Attorney General and the Department of State. Please advise the Asset Forfeiture and Money Laundering Section in writing of any foreign assets that have been forfeited or are about to be forfeited under United States law with the assistance of a foreign country.

To initiate this process, the investigative agency or prosecutive office responsible for the forfeiture should send AFMLS a memorandum detailing the foreign assistance provided and recommending the amount to be shared. Representatives of foreign governments should not be asked to submit a sharing request. Unlike domestic sharing, there is no authority for us to insist that a foreign country use shared property in any particular manner or allocate it to any particular governmental component (e.g., a provincial law enforcement agency). *See* the Criminal Resource Manual at 2268.

9-116.500 Weed and Seed Initiative -- Transfers of Real Property

United States Attorneys, assisted by the United States Marshals Service, are authorized to identify seized or forfeited properties for potential transfer in support of the Weed and Seed initiative. *See* the Criminal Resource Manual at 2269 and 2270. As properties are forfeited, appropriate Weed and Seed transfers will be made pursuant to the policies and procedures set out herein.

The proposed uses of any property to be so transferred must be in accordance with the Weed and Seed initiative, focusing on the support of community-based drug abuse treatment, prevention, education, housing, job skills, and other activities that will substantially further Weed and Seed goals. United States Attorneys are encouraged to consult with the Asset Forfeiture and Money Laundering Section for guidance in particular cases. The property must also be suited to the proposed use and the use must be consistent with all applicable federal, state, and local laws and ordinances.

Any proposed transfer must have the potential for significant benefits to a particular community and these benefits must outweigh any financial loss or adverse effects to the Department of Justice Assets Forfeiture Fund.

9-116.520 Transfer of Forfeited Real Property Pursuant to Weed and Seed Initiative

All requests for sharing of real property pursuant to the Weed and Seed Initiative shall be in a Form DAG-71 and must follow the established sharing procedures as outlined in the *Attorney General's Guidelines on Seized and Forfeited Property* (USAM 9-118.000). The appropriate official of the seizing federal investigative agency must recommend the transfer, as well as the United States Attorney in the particular judicial district where the property is located. Approval by the Office of the Deputy Attorney General is required for transfers of forfeited real property.

The participating state or local law enforcement agency, or other governmental entity permitted by applicable laws to hold property for the benefit of the law enforcement agency, will receive the initial transfer of the real property. The state or local agency will then, pursuant to prior agreement, transfer the property to the appropriate public or private non-profit organization for use in support of one of the programs described above.

The authority of the participating state or local investigative agency to transfer forfeited real property to other state or local public agencies may vary from jurisdiction to jurisdiction. In each case, the issue must be addressed in the submitted DAG-71 prior to the sharing transfer to the state or local agency.

9-116.530 Liens, Mortgages, and Third Party Ownership Interests in Weed and Seed Transferred Real Property

Mortgages on real property transferred pursuant to the Weed and Seed initiative are not payable from the Department of Justice Assets Forfeiture Fund. Liens and mortgages shall be the responsibility of the recipient state or local community-based organization.

Any secured debts or other qualified interests owed to creditors are not payable from the Department of Justice Assets Forfeiture Fund. The payments of these interests are the responsibility of the recipient state or local agency or non-profit organization.

9-116.540 Asset Seizure, Management and Case-Related Expenses

Expenses incurred in connection with the seizure, appraisal, or security of the property are payable from the Assets Forfeiture Fund. Case-related expenses incurred in connection with normal proceedings undertaken to protect the United States' interest in seized property through forfeiture, are also payable from the Assets Forfeiture Fund.

9-116.550 Law Enforcement Concurrence

Any state or local law enforcement agency that would otherwise receive an equitable share of proceeds from the sale of a forfeited property must voluntarily agree to forego its share before a Weed and Seed transfer will be authorized.

9-116.600 Transfer of Property Forfeited under the Magnuson Fisheries Conservation and Management Act from the Department of Justice to the National Oceanic and Atmospheric Administration

Under the authorities contained in the Magnuson Fisheries Conservation and Management Act, (MFCMA) 16 U.S.C. §§1801-1882, the Department of Justice will transfer to the National Oceanic and Atmospheric Administration (NOAA) funds forfeited by the Attorney General for violations under the MFCMA. Assets seized for forfeiture under the MFCMA should be deposited in the Seized Asset Deposit Fund with the United States Marshals Services (USMS). Following the forfeiture action, the funds will then be transferred by the USMS to NOAA. Where expenses have been incurred by the USMS, these expenses must first be deducted before the net proceeds of forfeiture are transferred to NOAA. If no expenses are incurred, the entire amount will be transferred to NOAA.

Any MFCMA forfeitures and requests for transfers occurring after June 1, 1992, should be identified and processed pursuant to the procedures in set forth in the Criminal Resource Manual at 2272. In addition to USMS expenses, the Department of Justice (DOJ) Assets Forfeiture Fund will retain 10 percent of the total net proceeds of the forfeiture. This amount represents the Department of Justice share based upon its effort in forfeiting the property. *See* the Criminal Resource Manual at 2271.